

## II. REMARKS

Claim 6 is pending. Claim 6 is amended. Support for the amendment may be found throughout the application as originally filed; for example, pages 35-37, Example 3. No new matter is added.

### Rejections under 35 U.S.C. § 101

Claim 6 is drawn to an apparatus that performs a process of predicting resistance of an HIV strain. Specifically, the examiner states that *"A review of the specification reveals that the means can be software...that computer program per se are non-statutory"*.

Applicants respectfully traverse the rejection. The amended claim 6 recites a diagnostic system for quantitating the individual contribution of a mutation or combination of mutations to a drug resistance phenotype exhibited by an HIV strain comprising computer means for predicting the fold resistance exhibited by said HIV strain. Clearly, the claimed system is directed to an apparatus useful for quantitating contribution of mutation(s) to a drug resistance phenotype of an HIV virus.

*"A claimed process is surely patent-eligible under if it is tied to a particular machine or apparatus, or it transforms a particular article into a different state or thing"*; in re Bilski 88 USPQ2d 1385. As the claimed system is directed to a specific apparatus, it is a patentable subject matter. Accordingly, the rejection is overcome. Reconsideration and withdrawal of the rejection are respectfully requested.

### Rejection under 35 U.S.C. § 112

Claim 6 is rejected under 35 U.S.C. § 112, second paragraph, for alleged being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the examiner states that the term "the censored values" lacks antecedent basis, steps 1 and 2 lack clarity, the term "the prediction P", the term "for each iteration" is unclear, the relationship of linear regressions recited in lines 37 and line 10 is unclear, the process of using Prediction P is unclear, the term "until the prediction converges", and terms "V", "V'" and "V<sub>0</sub>" are unclear.

Claim 6 is rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with written description requirement. Specifically, the examiner states that *"[t]he description fails to further describe the material or structure of the means as recited in claim 6"*.

In response, Applicants submit that the amendment to claim 6 has obviated any basis of the rejection. Reconsideration and withdrawal of the rejection are respectfully requested.

**Rejection under 35 U.S.C. § 102**

Claim 6 is rejected under 35 U.S.C. § 102(b) for alleged being anticipated by Servais et al.

Applicants respectfully traverse the rejection. Servais et al. does not disclose a censored value and the use thereof for analysis of drug resistance as recited in claim 6.

Since Servais et al. does not disclose each and every element of the claimed system, it does not anticipate claim 6. Accordingly, the rejection is overcome. Reconsideration and withdrawal of the rejection are respectfully requested.

In view of the foregoing amendment and remarks, allowance of the pending claim 6 is respectfully requested.

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